

Form Review

The Notification and Report Form For Certain Mergers and Acquisitions solicits information that the enforcement agencies use to help evaluate the antitrust implications of the proposed transaction.

**Copies of the Form and Instructions are available at
<http://www.ftc.gov/bc/hsr/hsrform>.**

INTRODUCTION

The form is divided into eight separate provisions plus a section of preliminary questions related to fees, violations, foreign reporting requirements and waiting periods:

- Item 1 - General data, including the identity of a contact person familiar with the form**
- Item 2 - Names of persons involved, the type and the value of the transaction**
- Item 3 - Description of the acquisition**
- Item 4 - Documents prepared by/for person filing, including studies of the acquisition, SEC filings and accounting reports**
- Item 5 - Dollar revenues of the reporting person for specific years**
- Item 6 - Profile of the reporting person, including entities it controls, its shareholders and its minority investments**
- Item 7 - Overlapping and geographic market data**
- Item 8 - Description of any prior acquisitions in the same industry**

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

Acquiring Person

Cookies and Crackers Galore, LLC ("CCG")
550 Cookie Dough Drive
Portland, OR 97202

Acquiring Entity

Cookie Crumble, Inc.
5000 Flamingo Road
Las Vegas, NV 89105

Acquired Person

Big Diversified Company ("Big D")
100 Park Avenue
New York, NY 10166

Acquired Entity

Yummy Cookies and Cakes, Inc. ("Yummy")
1 Chocolate Chip Way
San Diego, CA 92123

Pursuant to a Letter of Intent dated as of March 30, 2002, CCG intends to acquire all of the voting securities of Yummy for approximately \$53,000,000.

Consummation of the transaction is scheduled to take place on or about July 31, 2002, and is contingent upon, among other things, satisfactory completion of due diligence, execution of a definitive agreement and receipt of all consents and approvals, including expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**Item 3(a) should not reiterate the contract but should describe the transaction
as clearly and succinctly as possible**



PAYING THE APPROPRIATE FILING FEE

The filing fee is based on a three-tiered system that ties the amount paid to the total value of the voting securities or assets held as a result of the transaction

VALUE OF ASSETS OR VOTING SECURITIES TO BE HELD	FEE AMOUNT
Greater than \$50 million but less than \$100 million	\$45,000
\$100 million or greater but less than \$500 million	\$125,000
\$500 million or greater	\$280,000

FEE INFORMATIONAMOUNT PAID \$ 45,000

In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee (*acquiring persons only*).

Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER 65-0114007

or SOCIAL SECURITY NUMBER of payer _____

(acquiring person (and payer if different from acquiring person))

CHECK ATTACHED

☐

MONEY ORDER ATTACHED

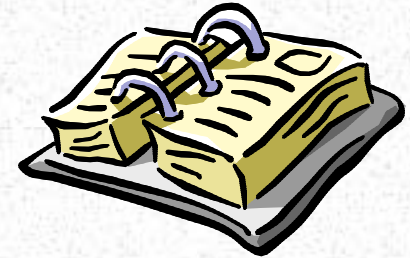
☐

WIRE TRANSFER

☒CONFIRMATION NO. 003167

FROM: NAME OF INSTITUTION

Bank of AmericaNAME OF PAYER (if different from PERSON FILING) Cookies and Crackers Galore LLC



WAITING PERIOD

- ◆ **A statutory waiting period must be observed before consummation**
 - **30 days for most transactions**
 - **15 days for cash tender offers/bankruptcy filings**
 - **WP ending on a weekend or holiday will expire on next business day**
- ◆ **Failure to pay the filing fee or submission of an incorrect/incomplete filing will delay the start of the WP**

IS THIS A CORRECTIVE FILING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
IS THIS ACQUISITION SUBJECT TO FOREIGN FILING REQUIREMENTS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, list jurisdictions:	
IS THIS ACQUISITION A CASH TENDER OFFER? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	BANKRUPTCY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? <i>(Grants of early termination are published in the Federal Register AND on the FTC web site www.ftc.gov)</i> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
ITEM 1 – PERSON FILING 1(a) NAME and HEADQUARTERS ADDRESS of PERSON FILING	Cookies and Crackers Galore, LLC 1550 Cookie Dough Drive Portland, OR 97202

EARLY TERMINATION

- ◆ Any person may request that WP be terminated before statutory period expires
 - Such “early termination” will be granted only
 - if at least one party specifies it,
 - all persons have submitted compliant forms, and
 - both antitrust agencies have completed their review
- ◆ ET is granted for most transactions, usually within two weeks
- ◆ Notice of each ET granted is published in the Federal Register, and listed in the FTC’s public reference room and on the FTC’s Internet site.

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS Cookies and Crackers Galore, LLC 1550 Cookie Dough Drive Portland, OR 97202		LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS Big Diversified Company 100 Park Avenue New York, NY 10166	
2(b) THIS ACQUISITION IS <i>(put an X in all the boxes that apply)</i> <input type="checkbox"/> an acquisition of assets <input type="checkbox"/> a merger (see § 801.2) <input type="checkbox"/> an acquisition subject to § 801.2(e) <input type="checkbox"/> a formation of a joint venture of other corporation (see § 801.40) <input type="checkbox"/> an acquisition subject to § 801.30 <i>(specify type)</i> <input type="checkbox"/> other <i>(specify)</i>		<input type="checkbox"/> a consolidation (see § 801.2) <input checked="" type="checkbox"/> an acquisition of voting securities <input type="checkbox"/> a secondary acquisition <input type="checkbox"/> an acquisition subject to § 801.31	
2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED <i>(acquiring person only)</i> <div style="display: flex; justify-content: space-around;"> <input checked="" type="checkbox"/> \$50 million <input type="checkbox"/> \$100 million <input type="checkbox"/> \$500 million <input type="checkbox"/> 25% (see Instructions) <input type="checkbox"/> 50% </div>			
2(d)(i) VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION \$ 53 MM	(ii) PERCENTAGE OF VOTING SECURITIES 100%	(iii) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION \$	(iv) AGGREGATE TOTAL VALUE \$ 53 MM

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50% is the highest threshold regardless of \$ value

Item 5(a) and 5(b)(i) require filing persons to provide annual dollar revenues listed by North American Industry Classification System (NAICS) code for a base year (currently 1997). Codes should be listed in ascending order and should appear only once in any subpart of Item 5.

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997 (1997 NAICS Manual)* for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products (EC97M31R-NL)* for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES (000)
311821	Cookies and Crackers	200,700
422490	Other Grocery and Related Products Wholesalers	52,303
722213	Snack and Nonalcoholic Beverage Bars	750

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

10-DIGIT PRODUCT CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES (000)
3118211111	Saltine crackers	25,000
3118214111	Sandwich cookies (except frozen)	50,000
3118214221	Chocolate chip cookies (except frozen)	100,000
3118214351	Oatmeal cookies (except frozen)	50,000

The acquiring person should submit revenue data for all entities it controls even if it acquired control of the entity after the base year. Those revenues would be reflected in both the base and most recent years. If an entity has been divested since the base year, no information is provided for that entity in Item 5.

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997 (1997 NAICS Manual)* for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products (EC97M31R-NL)* for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

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422490	Other Grocery and Related Products Wholesalers	52,303
722213	Snack and Nonalcoholic Beverage Bars	750

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3118211111	Saltine crackers	25,000
3118214111	Sandwich cookies (except frozen)	50,000
3118214221	Chocolate chip cookies (except frozen)	100,000
3118214351	Oatmeal cookies (except frozen)	50,000

The aggregate total revenue for the 10-digit NAICS manufacturing product code(s) listed in Item 5(b)(i) must equal the total revenues for the corresponding 6-digit code identified in Item 5(a).

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997 (1997 NAICS Manual)* for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products (EC97M31R-NL)* for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES
311821	Cookies and Crackers	200,700
422490	Other Grocery and Related Products Wholesalers	52,303
722213	Snack and Nonalcoholic Beverage Bars	750

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

10-DIGIT PRODUCT CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES
3118211111	Saltine crackers	1,400
3118214111	Sandwich cookies (except frozen)	50,000
3118214221	Chocolate chip cookies (except frozen)	100,000
3118214351	Oatmeal cookies (except frozen)	49,300

A product line that has been added through the company's own internal expansion since the end of the most recent year should be reported as a product added in 5(b)(ii)

ITEM 5(b)(ii) PRODUCTS ADDED OR DELETED				
DESCRIPTION (10-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES
3118214331 – Marshmallow cookies (except frozen)	x		2002	

Items 5(b)(iii) and 5(c) require filing persons to provide annual dollar revenues listed by NAICS code for the most recent year.

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS		
7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR I 2001 I TOTAL DOLLAR REVENUES
3118211	Crackers, soft pretzels, biscuits, and related products	96,000
3118214	Cookies, wafers, and ice cream cones and cups (except frozen)	340,000
ITEM 5(c) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY		
6-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR I 2001 I TOTAL DOLLAR REVENUES
422490	Other Grocery and Related Products Wholesalers	62,700
722213	Snack and Nonalcoholic Beverage Bars	12,000

Item 7(a) requires the reporting persons to identify any overlapping 6-digit NAICS industry codes in which both parties derived revenues in the most recent year

ITEM 7 DOLLAR REVENUES

7(a) 6-DIGIT NAICS CODE AND DESCRIPTION

311821 - Cookies and Crackers

422490 - Other Grocery and Related Products Wholesalers

722213 - Snack and Nonalcoholic Beverage Bars

7(b) NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

Big Diversified Company

Item 7(c) requires the parties to provide geographic market information for each overlapping code. Each of the six subparts of 7(c) references different 2–digit NAICS codes

7(c) GEOGRAPHIC MARKET INFORMATION

7(c)(i): 311821(Cookies and Crackers) - National

7(c)(iii): 422490 (Other Grocery and Related Products Wholesalers) – National

7(c)(iv): 722213 (Snack and Nonalcoholic Beverage Bars) -

STREET ADDRESS	CITY	ST	COUNTY
3350 Piedmont Rd., N.E. 30305	ATLANTA	GA	FULTON
1790 Second Ave. 36801	OPELIKA	AL	LEE
2300 Holiday Manor US 40222	LOUISVILLE	KY	JEFFERSON
5000 S. Monaco Pkwy 80222	DENVER	CO	DENVER
3486 East Pettit 46806	FORT WAYNE	IN	ALLEN
805 Euclid 40502	LEXINGTON	KY	FAYETTE
322 W. Camelback Road 85013	PHOENIX	AZ	MARICOPA
6950 N. Shiloh Road 75044	GARLAND	TX	DALLAS
5999 North Avenue 31201	MACON	GA	BIBB
2 Woodrow Street 29063	IRMO	SC	LEXINGTON

Responses that fall within subsection 7(c)(iv) require the mailing address of establishments organized alphabetically by state, and within each state, alphabetically by county, and within each county, alphabetically by city or town.

7(c) GEOGRAPHIC MARKET INFORMATION

7(c)(I): 311821(Cookies and Crackers) - National

7(c)(iii): 422490 (Other Grocery and Related Products Wholesalers) – National

7(c)(iv): 722213 (Snack and Nonalcoholic Beverage Bars) -

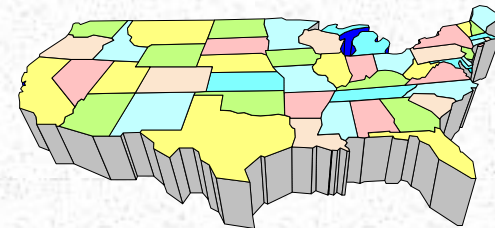
STREET ADDRESS	CITY	ST	COUNTY
3350 Piedmont Rd., N.E. 30305	ATLANTA	GA	FULTON
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7(c) GEOGRAPHIC MARKET INFORMATION

7(c)(I): 311821(Cookies and Crackers) - National

7(c)(iii): 422490 (Other Grocery and Related Products Wholesalers) - National

7(c)(iv): 722213 (Snack and Nonalcoholic Beverage Bars) -



U.S. Operations only

ST	COUNTY	CITY	STREET ADDRESS
AL	LEE	OPELIKA	1790 Second Ave. 36801
AZ	MARICOPA	PHOENIX	322 W. Camelback Road 85013
CO	DENVER	DENVER	5000 S. Monaco Pkwy 80222
GA	BIBB	MACON	5999 North Avenue 31201
GA	FULTON	ATLANTA	3350 Piedmont Rd., N.E. 30305
IN	ALLEN	FORT WAYNE	3486 East Pettit 46806
KY	FAYETTE	LEXINGTON	805 Euclid 40502
KY	JEFFERSON	LOUISVILLE	2300 Holiday Manor US 40222
SC	LEXINGTON	IRMO	2 Woodrow Street 29063
TX	DALLAS	GARLAND	6950 N. Shiloh Road 75044

Acquired Person – Big Diversified

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997 (1997 NAICS Manual)* for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products (EC97M31R-NL)* for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES
311821	Cookies and Crackers	155,700
311822	Flour Mixes and Dough Made From Purchased Flour	62,303
312140	Distilleries	22,850
326211	Tires and Tire Retreading	21,444
327310	Cement, Hydraulic	78,900
333311	Automatic Vending Machines	300,299
422490	Other Grocery and Related Products Wholesalers	118,450
451110	Sporting Goods Stores	35,000
483211	Inland Water Freight Transportation	15,000
722213	Snack and Nonalcoholic Beverage Bars	1,458

Acquired Person – Big Diversified

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The acquired person must limit its response in Items 5-7 to the assets to be sold and/or the issuer(s) whose voting securities are being acquired pursuant to §803.2.

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997 (1997 NAICS Manual)* for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products (EC97M31R-NL)* for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product Code." For further information on NAICS-based codes visit the www.census.gov web site.)

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722213	Snack and Nonalcoholic Beverage Bars	1,458

Item 8 requires the acquiring person to provide information regarding its prior acquisitions made within five years in any overlapping 6-digit NAICS code. Only acquisitions of 50% or more of the voting securities of an issuer which had annual net sales and total assets greater than \$10 million, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition need be listed.

ITEM 8 PRIOR ACQUISITIONS (to be completed by acquiring person only)

- (a) Cookie Crumble, Inc.
- (b) 5000 Flamingo Road, Las Vegas, NV 89105
- (c) Voting Securities
- (d) February 14, 1999
- (e) NAICS Code: 311821 – Cookies and Crackers

Item 8 is often useful in identifying transactions that were consummated in violation of the filing requirements

Procedures For Submitting Post-Consummation Filings

- **DON'T PANIC**
 - **NOTIFY THE PMN OFFICE IMMEDIATELY**
 - **FILE NOTIFICATION AS SOON AS POSSIBLE**
 - **SUBMIT REQUIRED INFORMATION IN THE SAME MANNER AS IF THE FILING HAD BEEN MADE TIMELY**
- **PROVIDE DETAILED LETTER FROM A COMPANY OFFICIAL EXPLAINING**
 - 1) **WHY THE VIOLATION OCCURRED**
 - 2) **WHEN AND HOW THE VIOLATION WAS DISCOVERED**
 - 3) **WHAT STEPS WILL BE TAKEN TO ENSURE FUTURE COMPLIANCE**

FOR EXAMPLE: ITEM 4 FINANCIAL DOCUMENTS AND ITEM 5(b)(iii) REVENUE DATA SHOULD REFLECT THE APPROPRIATE PERIOD PRIOR TO CLOSING

HOWEVER, THE AFFIDAVIT AND RESPONSE TO ITEM 3(c) OF THE FORM SHOULD INDICATE THAT THE TRANSACTION WAS CONSUMMATED.



“One Bite of the Apple”



Parties who are in violation of the Act may be liable for a civil penalty of up to \$11,000 for each day during which the party is in violation and may be subject to other equitable relief. Where parties have inadvertently failed to file, however, the government has generally not sought penalties

Common Reasons for Failing to File

- + Failure to aggregate**
- + Size of person miscalculated**
- + Investment only exemption inapplicable**
- + Acquiring remaining interests in controlled partnership**
- + Foreign persons unaware of HSR**

End of Form Review